

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 23, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Jeff Laszloffy, Vice Chairman (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 18, 1/14/2003; HB 224,
1/14/2003; HJ1, 1/14/2003; HB256,
1/14/2003
Executive Action: HB 256; HB 18; HB 224; HB 66; HB
40; HJ 1; HB 199; HB 166

HEARING ON HB 18

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 18 on behalf of the Montana Supreme Court. He explained that this is an act to increase the user surcharge for court information technology, making permanent the surcharge and the account established for the court information technology. He stated this is a necessary increase and he urged a yes vote.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 30}

Proponents' Testimony:

Chief Justice Karla Gray, Montana Supreme Court, supported HB 18. **Justice Gray** stated the surcharge would be increased from five to ten dollars. She explained that although the Court does not like surcharges, she stated it is necessary and critical. She stated the Information Technology Division (IT) serves 925 employees with a total of seven full-time employees. She stated if this bill is not passed, the current legislation would sunset thus removing the entire judiciary funding.

{Tape: 1; Side: A; Approx. Time Counter: 31 - 94}

Dan Chelini, Director of Technology Services, supported HB 18. He gave some background stating that they are understaffed. He stated there are two network support staff persons, one programmer trainer for the district courts case management system, three trainers for the limited court system, and his position. He stated they spent 35 percent of the funding received from the current surcharge on staff salaries, 15 percent on operating costs, and 50 percent to keep the court's technology going. He emphasized that if this bill does not pass, the technological support for all Montana courts will cease to exist.

{Tape: 1; Side: A; Approx. Time Counter: 95 - 166}

Dorothy McCarter, District Court Judge, Helena, supported HB 18. She explained she uses computer technology for drafting all orders and decisions, to access the Supreme Court data base to retrieve cases, and to research the law. She explained that the surcharge would pay for all the hard and software, as well as network services to interact with other state agencies, the Supreme Court and other district courts.

{Tape: 1; Side: A; Approx. Time Counter: 167 - 189}

Robert Throssel, Montana Magistrates and Courts of Limited Jurisdiction, City, Municipal and Justice of the Peace, supported HB 18. He stated there are 150 courts of limited jurisdiction and the expense of doing there own IT services would be financially prohibitive.

{Tape: 1; Side: A; Approx. Time Counter: 190 - 207}

Richard Meeker, Montana Juvenile Probation Officer's Association, supported HB 18. He stated the Association supports many employees who depend on the current IT system. He explained without this funding for IT support, they would be greatly handicapped.

{Tape: 1; Side: A; Approx. Time Counter: 208 - 225}

Al Smith, Montana Trial Lawyer's Association, supported HB 18. He stated that the public is the real beneficiary of the surcharge.

Wally Jewell, Justice of the Peace, Lewis and Clark County, supported HB 18. He stated since he was appointed in 1989, the lack of computerization was frustrating with its use of carbon copy forms. He stated that his court received IT services in 2001 thanks to the surcharge program. He explained the court is much more efficiently run with the IT system in place and it would be unbearable to return to the former method of doing business.

EXHIBIT(juh14a01)

{Tape: 1; Side: A; Approx. Time Counter: 226 - 267}

Scott Wyckman, Justice of the Peace, Gallatin County, supported HB 18. He worked on the installation and selection process for the Supreme Court. He stated this is an important program for the State of Montana. He feared that losing the surcharge would cost the County a lot of money as they would need to hire many more employees. He stated losing the surcharge would put them back into the dark ages and the public would lose services.

{Tape: 1; Side: A; Approx. Time Counter: 268 - 307}

Nancy Sweeney, Clerk of District Court, Lewis and Clark County, Member of Supreme Court Commission on Technology, and State Bar Access to Justice Committee, supported HB 18. She explained that Lewis and Clark county was one of the first pilot projects for IT

support and that it is still inadequate. She stated the courts are at a critical juncture on IT. She explained the fairness of this surcharge and that it would be waived for indigent people. She stated the IT can make distances and travel inconsequential and saves time and money. She emphasized the importance to the public of the passage of HB 18.

{Tape: 1; Side: A; Approx. Time Counter: 308 - 393}

Gordon Morris, Director of Montana Association of Counties, supported HB 18.

Opponents' Testimony:

Jeff Koch, Collection Bureau Services, Missoula, opposed HB 18. He stated he has to pass the user fees on to his small business customers. He stated this surcharge is a substantial tax to the businesses which are the backbone of Montana and which are striving to get the economy going. He suggested a better solution would be HB 369 which would add a surcharge to speeding tickets.

{Tape: 1; Side: A; Approx. Time Counter: 394 - 456}

Informational Testimony:

Brian Wolf, Chief Information Officer for Montana, stated he came to Montana, pursuant to the passage of SB 131 last session. He explained SB 131 as a mechanism to plan and employ IT in Montana. He participated in selecting the IT manager, Dan Chelini and stated he will continue to work under him.

EXHIBIT (juh14a02)

{Tape: 1; Side: A; Approx. Time Counter: 457 - 504}

Questions from Committee Members and Responses:

REP. NOENNIG asked about how case management works now and how it will work in the future. **Mr. Chelini** responded that most of the work with case management occurs with the district courts. He stated the courts of limited jurisdictions vary. He explained that the interconnection between varies and they are unable, at present, to do E-filing. **REP. NOENNIG** asked whether there is software for district court judges to schedule there own cases. **Mr. Chelini** stated that the process of changing, not the technology, is the difficult part.

{Tape: 1; Side: B; Approx. Time Counter: 12 - 65}

REP. RICE asked **REP. SHOCKLEY** about appeals to the higher court and whether the surcharge process would start over. **Justice Gray** responded that a person pays one surcharge, for example at justice court, which would take them all the way up.

REP. STOKER asked about the IT staying up to date. **Mr. Chelini** responded that courts are willing to accept new technology and that they are using a software program called full court which would be expanded.

REP. RASER asked **Mr. Koch** about the fees. **Mr. Koch** stated it would cost his firm \$25,000 a year in surcharge fees. He explained that he could live with leaving the fee at five dollars. **REP. RASER** asked **Justice Gray** to comment on **Mr. Koch's** dilemma. She explained that the problem is that they cannot dump out little pieces. She stated that over half of all the filings in Montana are from civil cases. She emphasized that to unload all of the fee on speeders would be unfair as the courts exist for all Montana citizens.

{Tape: 1; Side: B; Approx. Time Counter: 66 - 171}

REP. MALCOLM asked **Mr. Chelini** about the economics of the 100 percent increase of the surcharge. **Mr. Chelini** responded that this bill would increase by less than two percent which is still half of what other state agencies have. He emphasized this service is a process and not an event.

REP. CLARK asked **Mr. Chelini** about whether IT currently provides a data base for jurisdictions to access. **Mr. Chelini** stated that **REP. CLARK** was describing a central depository for court information which they do not have at present but is included in their future plan.

{Tape: 1; Side: B; Approx. Time Counter: 172 - 243}

Closing by Sponsor:

REP. SHOCKLEY closed stating he likes user fees especially in this bill. He explained that if it came out of the general fund, the people of Montana would be taxed and they do not like that. He stated that this bill would give IT the funding they need to support the IT for the courts.

{Tape: 1; Side: B; Approx. Time Counter: 244 - 261}

HEARING ON HB 224

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 224 on behalf of the Montana Supreme Court. He stated that it is necessary due to the unintended consequences of SB 176 in counties where they have water masters. He stated this would be a small change which the Court will explain.

{Tape: 1; Side: B; Approx. Time Counter: 262 - 276}

Proponents' Testimony:

Chief Justice Karla Gray, Montana Supreme Court, supported HB 225 stating this is a minor clean up bill in the wake of state assumption. She explained that the bill deals with water and standing masters. She set forth the changes the bill would make such as repealing 3-7-302 and ask for an immediate effective date to avoid potential entanglements.

{Tape: 1; Side: B; Approx. Time Counter: 277 - 383}

Gordon Morris, Director of Association of Counties, supported HB 224. He stated he previewed the bill and suggested John McMaster amend it.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. PARKER asked whether this bill alters the control structure of standing masters and the supervisory role of the district court. **Chief Justice Gray** responded that standing masters are full-time employees whereas water masters are appointed on a case-by-case basis. She reiterated the Court's view that employees have rights and its disapproval of "at will employees." She stated the district court judges will hire the standing masters. **REP. SALES** asked how many counties employ standing masters. **Justice Gray** responded there are standing masters in the fourth and eleventh judicial districts. **REP. NOENNIG** asked about lines 24-25 of the bill and why it was deleted. **Justice Gray** stated virtually all references to job qualifications and duties of employees under the judicial branch

were removed from statute and placed into the classification of compensation fund.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 50}

REP. CLARK asked about Mr. Morris' concern about the effects of precluding Butte-Silverbow. **Justice Gray** stated that it was certainly not their intent and the bill could be amended to ensure Butte-Silverbow County was included.

{Tape: 2; Side: A; Approx. Time Counter: 50 - 85}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 224 urging a do pass.

HEARING ON HB HJR 1

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

Opening Statement by Sponsor:

REP. HARRIS opened on HJR 1. **REP. HARRIS** stated this bill could be entitled the "Don't Turn Lawyers Into Liars" bill. He explained that many lawyers file motions to dismiss for failure to state a cause of action for which relief can be granted. He explained that this is a valid motion but that it has become a tool, or an empty motion, used to gain more time for the person filing. He stated this is nonsense as it is actually a violation of Rule 11. He explained that when a motion is filed, the signature represents that the motion is warranted by existing law.

EXHIBIT(juh14a03)

EXHIBIT(juh14a04)

{Tape: 2; Side: A; Approx. Time Counter: 86 - 170}

Proponents' Testimony:

Al Smith, Montana Trial Lawyer's Association, (MTLA) supported HJR 1. He stated it has become all too common that attorneys file these empty motions to dismiss. He explained that if a plaintiff sued the State for damages, the plaintiff must first submit its claim to the Tort Claims Division before proceeding to district court. The State has 120 days to review and decide the claim on the merits. The statute, including the 40 days to answer, would total 160 days. He emphasized that even though it

may look like an empty motion, it costs the plaintiffs time and money to respond to the motion.

{Tape: 2; Side: A; Approx. Time Counter: 182 - 204}

Jeff Koch, Montana Collections Association, supported HJR 1. He asked the Committee to consider shortening the answer time.

{Tape: 2; Side: A; Approx. Time Counter: 205 - 219}

Mike Moore, Attorney, Missoula, supported HJR 1 as a modified proponent. He stated that the answer period should not be increased but should remain at 20 days.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NOENNIG, STOKER and SHOCKLEY asked about the Rule 11 procedure and the inference that filing a rule 12(b) motion to dismiss is a violation. Committee discussed that although it may not be a violation, per se, as the court would reject the motion if it is not briefed, it is a waste of time for the attorneys and the court. **REP. HARRIS** stated this bill is an attempt to get more time through a nonmeritorious motion. The Committee discussed how the time is calculated. **REP. SHOCKLEY** explained that you only count business days.

{Tape: 2; Side: A; Approx. Time Counter: 220 - 263}

CHAIRMAN SHOCKLEY stated he is always offended when the Supreme Court sticks it's nose in their business like Judge Sherlock stating they must have open caucuses. Likewise, he stated he has a hard time telling the Court how to run their system. **REP. HARRIS** stated that the Court has been aware of this problem but that it is a low priority because they are so very busy.

{Tape: 2; Side: A; Approx. Time Counter: 263 - 398}

Closing by Sponsor:

REP. HARRIS closed on HJR 1 urging a do pass.

HEARING ON HB 256

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 256 stating this bill clarifies campus jurisdiction. He stated with the amendment to the bill, the university would have expanded jurisdiction to cover areas on the border of the campus. He explained the bill would allow the campus police to protect the borders and would save the city money.

{Tape: 2; Side: A; Approx. Time Counter: 399 - 457}

Proponents' Testimony:

Kenneth Willett, Public Safety Director, University of Montana, supported HB 256 stating the bill would clarify the ambiguity of the original bill which stated "campus related." He stated they may respond as a backup to a city call on the border, off campus, and they clearly could under this bill.

{Tape: 2; Side: A; Approx. Time Counter: 458 - 502}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. SHOCKLEY closed on HB 256 urging a do pass.

EXECUTIVE ACTION ON HB 256

Motion: REP. PARKER moved that HB 256 DO PASS.

Motion/Vote: REP. SHOCKLEY moved that HB 256 BE AMENDED. Motion carried unanimously by voice vote.

Discussion:

The Committee discussed the availability of security people to patrol the surrounding areas. They discussed that the word would get out to the public and that this would work.

Motion: REP. SHOCKLEY moved that HB 256 DO PASS AS AMENDED.

Vote: Motion that HB 256 DO PASS AS AMENDED carried 15-3 by voice vote with REPS. LASZLOFFY, RICE and LANGE voting no.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 132}

EXECUTIVE ACTION ON HB 18

Motion: REP. SHOCKLEY moved HB 18 DO PASS.

Motion: REP. SHOCKLEY moved that HB 18 BE AMENDED. (Justice Gray's Amendment)

Discussion:

REP. SHOCKLEY described the amendment to have an effective dated of July 1, 2003 and to strike the word "immediate" and to have the title of the bill reflect the changes. **Justice Gray** stated that the effective date should be June 28, 2003; and have the title reflect that date. REP. SHOCKLEY agreed with Justice Gray and stated the amendment is exactly what Justice Gray stated.

Vote: Motion that HB 18 BE AMENDED carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 133 - 226}

Discussion:

Justice Gray stated that REP. YOUNKIN's bill ties into this bill. She explained REP. YOUNKIN'S bill would charge speeders with a surcharge fee for court technology. **Justice Gray** emphasized that if this bill does not pass it will harm REP. YOUNKIN'S bill as there would be nothing for that bill to tie to because it relates to surcharges under 3-13-17.

Motion/Vote: REP. SHOCKLEY moved DO PASS as amended. Motion that HB 224 DO PASS as amended carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 219 - 277}

EXECUTIVE ACTION ON HB 66

Motion: REP. HARRIS moved that HB 66 DO PASS.

Motion: REP. NOENNIG moved that HB 66 BE AMENDED.

Discussion:

REP. HARRIS stated that he spoke with the Department of Justice (DOJ) about this amendment and that they liked the bill as it is.

REP. NOENNIG explained the amendments to HB 66 which would insert language allowing the attorney general to provide representation to the agency if requested by the agency.

Vote: Motion that HB 66 BE AMENDED carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 66 DO PASS as amended.

Motion that HB 66 DO PASS AS AMENDED carried unanimously by voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 28}

EXECUTIVE ACTION ON HB 40

Motion: REP. NEWMAN moved that HB 40 DO PASS.

Motion/Vote: REP. NEWMAN moved that HB 40 BE AMENDED. Motion carried unanimously by voice vote.

Motion: REP. GUTSCHE moved that HB 40 DO PASS AS AMENDED.

Discussion:

REP. NEWMAN stated that this bill would codify Terry v. Ohio. He explained that because the current statute states the officer must identify himself, the Supreme Court has thrown out cases because of it. John MacMaster stated he though REP. NEWMAN'S amendment needed to be revised.

Motion/Vote: REP. NOENNIG moved that HB 40 BE further AMENDED. (Noennig amendment) Motion carried unanimously by voice vote.

Motion: REP. NOENNIG moved that HB 40 DO PASS AS FURTHER AMENDED.

Discussion:

REP. STOKER expressed his concern about Page 1, Line 23, regarding items taken. He wanted language to ensure that any items taken would be immediately returned. **REPS. NOENNIG** and **LANGE** responded that it is not necessary but adding the word "immediately" would just add emphasis. **REP. RICE** stated her concern about the officer's expansion of powers in asking a person questions. **REP. NEWMAN** responded that a person has a right to remain silent but an officer has a right to ask a person for their driving information, name, and other pertinent information. He stated that Miranda only applies to custodial interrogation. Both the Montana and the U.S. Supreme Courts have ruled for more than 20 years that both Terry and traffic stops do not constitute custody. They are temporary detention for officers to gain information as opposed to custody and does not affect Miranda. **REP. SHOCKLEY** responded that Miranda requires the officer to tell the detainee about his right to remain silent. However, he emphasized that you can know that independently and refuse to answer based on the fact that you would incriminate yourself. He stated that if a guy will not cooperate with an officer, he can be arrested and charged with obstruction of justice. The statute states, "may demand" which does not give a guy a lot of latitude to refuse.

{Tape: 3; Side: A; Approx. Time Counter: 29 - 290}

REP. FACEY asked whether it is a violation of his constitutional rights to have to comply with answering an officer's questions. He asked at what point he may refuse to cooperate without being charged with obstruction. **REP. NEWMAN** responded that Miranda does not come into play until custody and interrogation. **REP. NOENNIG** stated you always have the right to remain silent but the only time they must advise you of that right is if custody and interrogation exists. **REP. HARRIS** stated that **REP. NOENNIG** clarified Miranda and what triggers it.

Vote: Motion that **HB 40 DO PASS AS FURTHER AMENDED** carried 13-5 with **FACEY, LASZLOFFY, MALCOLM, RICE, and SALES** voting no by roll call vote.

{Tape: 3; Side: A; Approx. Time Counter: 264 - 516}

{Tape: 3; Side: B; Approx. Time Counter: 1 - 32}

EXECUTIVE ACTION ON HJR 1

Motion: **REP. HARRIS** moved that **HJR 1 DO PASS.**

Discussion:

REP. NOENNIG stated that a motion to dismiss for failure to state a claim is really a disguised motion for an extension of time. He stated this bill is a good idea but that he is uncomfortable with the approach. **REP. NEWMAN** asked about the purpose of the extension of time amendment. **REP. HARRIS** responded that the purpose was to acknowledge that attorneys do have trouble responding within the 20 day response time, hence the 35-day answer time. He explained that the real point of HJR 1 is to discourage frivolous filings.

{Tape: 3; Side: B; Approx. Time Counter: 33 - 59}

Vote: Motion that HJR 1 DO PASS carried 16-1 by roll call vote with **REP. SHOCKLEY** voting no.

EXECUTIVE ACTION ON HB 214

Motion: **REP. SHOCKLEY** moved that HB 214 DO PASS.

Discussion: The Committee discussed the bill and concluded it needs some work. **REP. SHOCKLEY** stated the bill is to make the law conform with case law. He stated that a subcommittee would be a good idea. **REP. CLARK** commented that the proposed amendments are mucky and that this bill cannot be fixed during this executive action. **REP. NOENNIG** stated that he would like to replace "control" with "supervise" throughout the bill. **REP. SHOCKLEY** read from the Crisifulli v. Bass, the Montana Supreme Court case on parental duty to supervise their minor child.

REP. HARRIS moved that **THE CHAIR TO APPOINT A SUBCOMMITTEE TO REVIEW AND REVISE HB 214**. **CHAIRMAN SHOCKLEY** unilaterally appointed **REPS. HARRIS, NOENNIG** and **SALES** to form the subcommittee.

{Tape: 4; Side: A; Approx. Time Counter: 1 - 12}

EXECUTIVE ACTION ON HB 199

Motion: **REP. HARRIS** moved that HB 199 DO PASS.

Discussion:

REP. HARRIS stated that this bill would allow a detainee to post a driver's license in lieu of bail. **REP. SHOCKLEY** stated that no

police officer would, when detaining a drunk, take his driver's license instead of bail. **John MacMaster** explained some amendments which he distributed.

Motion/Vote: REP. HARRIS moved that HB 199 BE AMENDED. Motion carried unanimously by voice vote.

{Tape: 4; Side: A; Approx. Time Counter: 13 - 193}

Motion/Vote: REP. CLARK moved that HB 199 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 166

Motion: REP. FACEY moved that HB 166 DO PASS.

Discussion:

REP. SHOCKLEY stated that this bill was requested by the Law and Justice Interim Committee. REP. NOENNIG stated that prosecutors wanted veto power so they could avoid the situation where a defendant doesn't want the evidence to come in. He stated the problem with the prosecutorial veto is that any arraignment would require the prosecution to be there to have the option to veto or not.

Motion/Vote: REP. FACEY moved that HB 166 BE AMENDED. Motion failed unanimously by voice vote.

Vote: Motion HB 166 DO PASS carried unanimously by voice vote.

{Tape: 4; Side: A; Approx. Time Counter: 195 - 400}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh14aad)